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Supreme Court of the United States

October Term, 1929.

No. [illegible] 22

L. M. WILLCUTS, as Collector of Internal Revenue for the District of Minnesota,

Petitioner,

vs.

CHARLES W. BUNN,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

CHARLES BUNN,
Attorney for Respondent.

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Certiorari should be denied, because the decisions below were clearly right.

I.

The Solicitor General's argument assumes that the *Pollock* case and the decisions preceding and following it went no further than to hold *interest* on municipal bonds exempt from federal taxation. But those decisions are not so limited. They

settle that there are certain instrumentalities of governments "so intimately connected with the performance of a duty by one government, that any taxation of it by the other would be such a direct interference with the functions of government itself as to be plainly beyond the taxing power"; that municipal securities are in that class; that "when the instrumentality is of that character, the immunity extends not only to the instrumentality itself, but to income derived from it"; that in such cases the immunity does not depend upon degree of burden, but that "to any extent, however inconsiderable," is unlawful. There is no warrant in the decisions for distinguishing between interest income and any other income.

Weston v. Charleston, 2 Peters 449, at 468.

Pollock v. Farmers Loan & Trust Co., 157 U. S. 429, at 583-6, 601-4, 652, 653; 158 U. S. 601, at 618, 666, 680, 693.

Gillespie v. Oklahoma, 257 U. S. 501.

Metcalf & Eddy v. Mitchell, 269 U. S. 514, at 522, 524.

Eisner v. Macomber, 252 U. S. 189, *United States v. Phellis*, 257 U. S. 156, and *Doyle v. Mitchell Bros. Co.*, 247 U. S. 179, show how increment in value may be treated as income and separated from capital when sale of property is made.

As the Government's attempted tax is laid only on income, the *Pollock* case and the decisions following it seem conclusive.

II.

There is also in this tax a clear burden on the States.

The usual inducements to an investment purchase of securities are two, the direct return in interest or dividends expected, and the hope of profit by increased value of the security itself. In times especially when going interest rates are high fixed income securities (like municipals) are purchased by investors

because they know that as interest rates fall the value of the security itself is certain to increase. Such increase can commonly be realized only by a sale.

In times of normal or low interest rates the bonds which tend to increase in value as maturity approaches are those carrying low interest coupons and selling at a discount. This is an important fact considered by investors universally.

In either case, if the increment in state securities is subject to federal taxation, it forces states and their municipalities either to higher interest coupons or to lower selling prices for their bonds. The burden on them is therefore both certain and direct.

The same rule will of course apply to taxation of Federal securities by States.

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